Chapter 14

Property Management

INTRODUCTION

This chapter provides guidance to WtW program operators on the acquisition, management, and disposition of property acquired under the WtW program. It contains the following sections:

- Requirements for States and Other Governmental Grant Recipients and Subrecipients
- Requirements for Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Recipients and Subrecipients
- Other Property Management Considerations.

The types of property requirements discussed in this chapter relate to property acquired by grantees and subgrantees with WtW grant funds. As is discussed further in this chapter, federally-owned property is not expected to be made available for use in the WtW program.

Charts showing types of property and application of property regulations are included at the end of this chapter.

What the Regulations Require

For State, local, and Indian tribal governments, WtW requirements governing the title, use, and disposition of equipment and supplies purchased with WtW funds are the "Common Rule" requirements found at 29 CFR Part 97, *Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*.

The Part 97 requirements apply to governmental entities that are recipients or subrecipients of Federal grant funds. They do not apply to nonprofit entities, institutions of higher education, or commercial organizations. An underlying principle of Part 97 is that, if a governmental entity makes a subgrant to a nonprofit entity or an institution of higher education, then the nonprofit or higher education institution must follow the requirements of 29 CFR Part 95. Part 95 also applies to direct grant recipients. The requirements of Part 95 also apply to commercial organizations that are grant recipients and subrecipients by DOL.

REQUIREMENTS FOR STATES AND OTHER GOVERNMENTAL GRANT RECIPIENTS AND SUBRECIPIENTS

The Part 97 regulations address property requirements for governmental recipients and subrecipients at Part 97.31 (Real Property), Part 97.32 (Equipment), Part 97.33 (Supplies), and Part 97.34 (Copyrights).

Real Property

29 CFR Part 97.31 establishes the rules for the title, use, and disposition of real property. Because the purchase or construction of real property is prohibited (OMB Circular A-87, Attachment B, Item 19, and 29 CFR 645.300(l)(I-ii)) unless specifically authorized by ETA, these guidelines will not apply to the WtW program.

Equipment

Equipment is defined at 29 CFR 97.3 as "tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit, including all costs related to the property's final intended use." The basis for determining acquisition cost is described more fully in 97.3. Grantees may use their own definition of "equipment" provided it includes the above minimum standards. The prior approval requirements for acquisitions over $5,000 are discussed more fully in OMB Circular A-87 and Chapter 5, *Cost Principles and Allowable Costs*.

States. Section 29 CFR Part 97.32(a) establishes that title to equipment vests upon acquisition in the recipient or subrecipient, i.e., whoever acquired the equipment. As to use and disposition, no requirements are imposed on State recipients and subrecipients beyond the following: "A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures...". [97.32(b)] This provision of Part 97 intends for State requirements applicable to equipment acquired with WtW funds to be the same as for equipment acquired with other Federal grant funds or with State funds.

State recipients and subrecipients have no obligation to the Federal government for WtW equipment they acquire with WtW grant funds beyond compliance with State standards for the use, care, and disposition of equipment. Thus, State entities that are recipients or subrecipients of WtW funds have no obligation to compensate DOL for its share of the fair market value of equipment *unless* State procedures require such compensation.

Other Governmental Entities. With respect to equipment acquired with WtW funds by *governmental* recipients/subrecipients other than States, the Federal standards contained in paragraphs (c) through (e) of 97.32 apply. Those Federal standards provide that the acquiring entity must use the equipment in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency. The acquiring entity must make the equipment available for use on other projects or programs currently or previously supported by the Federal government, to the extent that such use will not interfere with its use in WtW programs. Preference for other use shall be given to programs or projects supported by DOL. User fees should be considered, if appropriate, and treated as program income. [29 CFR Part 97.24] The equipment cannot be used to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute. With the approval of the awarding agency, the acquiring agency may trade in or sell equipment and use the proceeds to purchase replacement equipment.

The acquiring agency must meet the following minimum management standards:

- Equipment records must be maintained that include the following data on each piece of equipment: description; serial number; funding source of property; title holder; acquisition date and cost; percentage of Federal participation in the cost; location, use, and condition of the property; and ultimate disposition data including date of disposal and sale price.

- A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

- A control system must be developed to ensure adequate safeguards to prevent loss (including acts of nature such as floods and earthquakes), damage, or theft of the property. Any loss, damage, or theft must be investigated.

- Adequate maintenance procedures must be developed to keep the property in good condition.

- If property is sold, proper sales procedures must be established to ensure the highest possible return.

If equipment with a current per-unit fair market value in excess of $5,000 is no longer needed for the original project or program (or for other activities currently or previously supported by a Federal agency), it can be sold. The awarding agency's share of the proceeds is determined by multiplying the current market value (or the proceeds) by the awarding agency's share of the equipment.

Equipment items with a current per-unit fair market value of less than $5,000 may be kept, sold, or disposed of with no obligation to the awarding agency. The awarding agency may dispose of the equipment if the acquiring agency does not take appropriate action.

Federally-owned and Provided Equipment

29 CFR Part 97.32(f) states that, if a grantee or subgrantee uses federally-owned equipment, title will remain vested in the Federal government, and Federal agency rules will apply to its use, management, and disposition. Federal equipment is not expected to be made available for WtW activities.

Section 29 CFR 97.32(g) establishes the right of the Federal government to take title to equipment acquired with grant funds or to direct the transfer of title to a third party. Specific requirements to implement that right are specified in paragraph (g). There is no provision that extends the rights of the Federal government to lower levels, i.e., recipients or subrecipients; however, there is also no prohibition against extending the rights. WtW entities may wish to explore this avenue on a case-by-case basis.

Supplies

29 CFR Part 97.33 provides standards that apply to both States and other governmental recipients and subrecipients. It states that title to supplies acquired under a WtW grant or subgrant vests in the recipient or subrecipient, respectively. As to disposition, this part indicates that the recipient or subrecipient shall compensate the awarding agency for its share of the residual inventory of unused supplies if the inventory exceeds $5,000 in aggregate fair market value when the award is terminated or completed, and if the supplies are not needed for any other federally-sponsored programs or projects.

Copyrights

29 CFR Part 97.34 states that the Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, and otherwise use, and authorize others to use, for Federal government purposes:

- The copyright in any work developed under a grant, subgrant, or contract under a grant/subgrant
- The rights of copyright bought with grant funds by a grantee, subgrantee, or contractor.

Note that the Federal right in this instance does not "pass through" to contractors. Commercial entities operating as subrecipients are governed by 29 CFR Part 95.

Other Intangible Property

Neither 29 CFR Part 97 nor 20 CFR Part 645 establish requirements for patent rights or other intangible property for State or governmental organizations that are recipients or subrecipients.

REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT, AND COMMERCIAL RECIPIENTS AND SUBRECIPIENTS

The Federal requirement that generally applies for recipients and subrecipients that are institutions of higher education, hospitals, and other nonprofit organizations are set out in the DOL regulations at 29 CFR Part 95. The property standards are found at 95.30 through 95.37.

Nonprofit organizations subject to these regulations will, most often, be subrecipients that receive awards from higher tier recipients or subrecipients or will be recipients under the competitive grant award process. Commercial organizations that receive grants and subgrants are also covered. However, unlike Part 97, the Part 95 regulations do not use the terms “grantee” and “subgrantee”. Instead, only the term “recipients” is used. 29 CFR 95.5, Subawards, makes the Part 95 regulations applicable to subrecipients also. Therefore, in reading Part 95, the term “subrecipient” should be read to include the term “recipient”. This TAG section uses the term “subrecipient” throughout, although Part 95 applies equally to recipients and subrecipients alike.

Several provisions of the Part 95 regulations require approval of the DOL Grant Officer. The WtW Interim Rule has delegated this approval authority to the States for formula grantees only. The prior approval requirements for acquisitions over $5,000 are discussed more fully in OMB Circular A-122 and Chapter 5, *Cost Principles and Allowable Costs*.

Federally-Owned and Provided Property

95.33(a) states that, if a subrecipient is provided federally-owned property, title will remain vested in the Federal government, an annual inventory will be provided DOL, and the Grant Officer will decide disposition. Federal property is not likely to be made available for WtW activities.

Exempt Property

Exempt property has a statutory basis and a specific Grant Officer determination to vest title in the subrecipient with no further obligation to DOL. Since neither WtW nor any other Federal statute provides this authority, no property acquired by a nonprofit WtW recipient or subrecipient will meet these standards.

Equipment

Equipment is tangible nonexpendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit that was charged directly to the grant or subgrant. If the cost of the equipment was not charged directly to the grant or subgrant at the time of acquisition, but depreciation expense is being charged over the useful life of the asset, or a use allowance is being charged, such equipment does not fall under the Part 95 regulations. Only the allowable cost guidelines in A-122, Attachment B, Item 11, Depreciation or Use Allowances, apply.

Title to nonexempt equipment vests in the subrecipient subject to the use and disposition conditions of 29 CFR 95.34(b) through (g). The subrecipient has the right to use the property in the project for which it was acquired as long as it is needed, whether or not the project continues to be supported by WtW funds. When no longer needed for the original project, the subrecipient shall use it in connection with its other federally-sponsored activities. Priority shall be given to activities sponsored by ETA. [95.34(c)]

While the equipment is being used for the project for which it was originally acquired, the subrecipient shall make it available for other uses that do not interfere with project work. First preference will be given to other ETA-sponsored projects; second preference to other federally-supported activities. User charges shall be treated as program income. [95.34(d)] The subrecipient shall not use equipment acquired with WtW funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, for as long as the Federal government retains an interest in the equipment. [95.34(b)]

The acquiring agency must meet the following minimum management standards:

Equipment records must be maintained that include the following data on the equipment: description; identification number; funding source of property; title holder; acquisition date; percentage of Federal participation in the project cost; location, condition, and last inventory date for the property; acquisition cost; and ultimate disposition data including date of disposal and sale price or current market value.

A physical inventory of the equipment must be taken and the results reconciled with the equipment records at least once every two years. The subrecipient must verify the existence, use, and need for the equipment.

A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.

Adequate maintenance procedures must be developed to keep the equipment in good condition.

If equipment is sold, proper sales procedures must be established to provide competition to the extent practicable and result in the highest possible return. (When acquiring replacement equipment, the subrecipient may use the old equipment as a trade-in or use the sale proceeds to offset the cost of the replacement equipment, subject to written approval of the DOL Grant Officer.)

When the property is no longer needed, the subrecipient will dispose of it in accordance with the following standards. For property with a current per-unit fair market value of less than $5,000, Part 95 is silent, i.e., the subrecipient has no further obligation to DOL or the awarding agency. For property with a current per-unit fair market value of $5,000 or more, the subrecipient may retain the property for other uses, provided that compensation is made to DOL. The subrecipient shall compute amounts due to the DOL by applying the percentage of WtW participation in the cost of the original grant or agreement under which the property was obtained to the current fair market value of the property. If the subrecipient has no further use for the property, disposition instructions are to be requested of DOL, as prescribed in 95.34(g)(1) through (4):

- Sell the equipment and reimburse DOL for its percentage of participation. The recipient may retain up to 10% or $500, whichever is less, for selling and handling expenses.

- If instructed to ship the equipment elsewhere, the recipient is reimbursed according to its percentage of participation, plus shipping and interim storage costs.

- If instructed to otherwise dispose of the equipment, the recipient is reimbursed for all costs of disposition.

- DOL reserves the right to transfer the title to the equipment to another eligible recipient.

Supplies and Other Expendable Property

Section 29 CFR 95.35 provides standards for supplies, which are items of tangible personal property with a useful life of one year or less or a unit acquisition cost of less than $5,000. Title vests in the subrecipient subject to management and disposition conditions. The subrecipient shall maintain sufficient records to determine the amount of unused supplies on hand at the termination of the award. The subrecipient shall compensate DOL for its share of the residual inventory if the inventory exceeds $5,000 in aggregate value upon termination or completion of the award, and if the supplies are not needed for any other federally-sponsored programs or projects. Supplies shall not be used to provide services to non-Federal outside organizations for a fee that is less than that charged by private companies for equivalent services.

Intangible Personal Property

Section 29 CFR 95.36 provides standards for inventions/patents, copyrights, and data. While WtW activities are not expected to result in inventions or patents, these requirements govern when applicable.

Inventions and Patents. The applicable regulations are issued by the Department of Commerce at 37 CFR part 401.

Copyrights. The subrecipient may copyright work developed or purchased under a WtW award. DOL shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, and otherwise use (and authorize others to use) the work for Federal purposes.

Data. DOL has the right to obtain, reproduce, publish, or otherwise use data first produced under an award and to authorize others to do the same for Federal purposes.

Title, Use, and Disposition. Title to intangible property vests in the subrecipient. Use is restricted to the originally-authorized purpose, and the subrecipient must follow the provisions of 95.34(g) for disposition and DOL compensation.

Note that the Federal right in these instances does not “pass through” to vendors. Grantees and subgrantees must include such rights in the agreement with vendors, should there be a need.

OTHER PROPERTY MANAGEMENT CONSIDERATIONS

Year 2000 Compliance

Both grantees and subgrantees may purchase only such information technology equipment and supplies that are considered to be "Year 2000 compliant". Documentation of compliance should be maintained for audit purposes.

General Guidance Regarding Leasing

The decision to rent or buy real or personal property must be governed by considerations of economy. Considerations may differ by property type and according to market conditions. Thus, leasing generally is the least economical method of obtaining required equipment. Leasing with an option to purchase is generally preferable to straight leasing.

However, for real property, administrative requirements make leasing the only option, as the construction or purchase of real property is not allowed under the WtW program. Permissible leases of real property are limited to operating leases, not capital leases. Capital leases are arrangements which result in the ownership of property and are therefore treated by Federal cost principles as purchases. As such, WtW funds may not be used for lease payments under capital leases involving real property. In addition, subrecipients may not charge fair market rent or lease rates to the WtW program for their own real or personal property used in the WtW program, or lease from other activities in which they have a vested interest or which has interest vested to them. [OMB Circular A-122] The procurement of equipment through leasing arrangements is also discussed in Chapter 13, *Procurement*.

<table>
<tr><th colspan="4">Types of Property</th></tr>
<tr><th>Real</th><th colspan="3">Personal</th></tr>
<tr><td rowspan="6">Land, including land improvements, structures, and appurtenances thereto, but excluding moveable machinery and equipment (not allowable under the WtW program)</td><th colspan="2">Tangible</th><th>Intangible</th></tr>
<tr><th>Nonexpendable</th><th>Expendable</th><td rowspan="5">Without physical existence: patents, inventions, or copyrights that are produced or acquired under the grant</td></tr>
<tr><th colspan="2">29 CFR Part 95</th></tr>
<tr><td>Useful life of more than one year and a unit acquisition cost of $5,000 or more</td><td>All else</td></tr>
<tr><th colspan="2">29 CFR Part 97</th></tr>
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Application of Property Regulations		
Relationship Type	**Kind of Organization**	**Application Regulations for WtW**
Recipient/Subrecipient	States	**29 CFR Part 97** (Common Rule) Equipment - 97.32 (a),(b),(f),(g) Supplies - 97.33 Copyrights - 97.34
Subrecipient Recipient (Competitive Grants)	Local Governments	**29 CFR Part 97** (Common Rule) Same as above except for Equipment - 97.32 (a),(c),(g)
Subrecipient Recipient (Competitive Grants)	Nonprofits, Hospitals, and Institutions of Higher Learning	**29 CFR Part 95** (DOL codification of OMB A-110) Equipment - 95.34 (f), (g) Supplies - 95.35 Copyrights - 95.36
Subrecipient/Recipient	Commercial Entities	**29 CFR Part 95**